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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re K.C., a Person Coming Under the  
Juvenile Court Law.

H042679  
(Santa Cruz County  
Super. Ct. No. DP002363)

SANTA CRUZ COUNTY HUMAN  
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

T.C. is the mother of K.C., age nine, and Z.J., age seven. Both children are dependents of the juvenile court. In this appeal, Mother asserts that the juvenile court erred in summarily denying her petition under Welfare and Institutions Code section 388.<sup>1</sup>

**STATEMENT OF THE FACTS AND CASE**

The juvenile court case involving K.C. and Z.J. has been the subject of numerous appeals in this court, and the underlying facts are stated in this court's opinions in prior appeals. To summarize, Mother had two children, K.C. and her brother Z.J., of whom

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

she informally shared custody with their father. The Santa Cruz County Human Services Department (Department) initiated dependency proceedings after Z.J. suffered severe brain injuries that doctors considered non-accidental. The Department eventually concluded that the injuries had been sustained while Z.J. was in the home of Mother, but were likely caused by a third party and not either of the parents.

On April 7, 2011, the juvenile court sustained original petitions as to both children under section 300. It placed Z.J. with the children's paternal grandmother, while placing K.C. with Father under the supervision of the Department. After a series of events, the juvenile court removed K.C. from Father, and placed her with Grandmother. The children have been living with Grandmother, who was appointed their guardian in 2013.

T.C. filed a petition on June 17, 2015, under section 388 seeking to modify the court's February 19, 2015 order that continued the existing guardianship by Grandmother. The section 388 petition sought that the court take one of three actions: (1) terminate K.C.'s and Z.J.'s legal guardianship, place them with Mother and order family maintenance services; or 2) order family reunification services for Mother, or (3) return K.C. to Mother and order family maintenance services, leaving Z.J. under the guardianship of Grandmother. The juvenile court summarily denied her petition, and she filed this appeal.

## **DISCUSSION**

Mother argues on appeal that the juvenile court erred in summarily denying her section 388 petition.

We review a juvenile court's denial of a section 388 petition for abuse of discretion. We "may not disturb the decision of the trial court unless that court has exceeded the limits of judicial discretion by making an arbitrary, capricious, or patently absurd determination. [Citation.]" (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1335; *In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.)

The legal principles applicable when a section 388 petition is denied without an evidentiary hearing were recently set out in *In re G.B.* (2014) 227 Cal.App.4th 1147. “Under section 388, a parent may petition to change or set aside a prior order ‘upon grounds of change of circumstance or new evidence.’ (§ 388, subd. (a)(1); see also Cal. Rules of Court, rule 5.570(a).) The juvenile court shall order a hearing where ‘it appears that the best interests of the child . . . may be promoted’ . . . by the new order. (§ 388, subd. (d).) Thus, the parent must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child’s best interests. [Citation.]” (*Id.* at p. 1157, original italics, fn. omitted.)

“A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. [Citations.] It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing. [Citations.] While the petition must be liberally construed in favor of its sufficiency [citations], the allegations must nonetheless describe specifically how the petition will advance the child’s best interests. [Citations.]” (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) The summary denial of a petition under section 388 is only appropriate if the petition “fails to state a change of circumstance or new evidence that even *might* require a change of order . . . .” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.)

It is more difficult to show that granting a section 388 petition is in the child’s best interests when the changing circumstances come after reunification services have been terminated or have been denied, at which time the child’s need for a permanent, stable home is paramount. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 420; *In re Casey D.* (1999) 70 Cal.App.4th 38, 48.)

The change of circumstance alleged in the section 388 petition was the fact that Mother had recently married in December 2014, and had moved to Louisiana in February 2015. Both she and her husband were employed, and were doing better

financially than they were in California. With her petition, Mother included a 31-page statement that detailed her history with K.C. and Z.J., and her new circumstances in Louisiana. At the hearing, the court gave Mother time through a telephonic appearance, to express what she wanted for the children and how her life had changed.

In addition to Mother's petition and attached statement, the court also considered information from K.C.'s court appointed special advocate (CASA) who said that K.C. was very close to her brother, and that K.C. was sad that her mother had moved out of state. The CASA also represented that she was very concerned about Mother's move to Louisiana, and that Mother had not had any in-person visits with the children in the four months since the move. Prior to the move, Mother's visitation schedule with the children was 11:30 a.m. to 5:00 p.m. on Sundays. After she moved out of state, her weekly visits took place over Skype or Facetime. After a visit on Easter in 2014 during which Mother became visibly emotional, she did not have any scheduled visits with the children for the next month.

Mother's petition showed that her living situation had changed, because she had gotten married, moved to Louisiana and secured stable employment. However, her petition did not show how the requested changes to the court's February 2015 order were in the children's best interests.

Accordingly, the juvenile court acted well within its discretion in denying Mother's section 388 petition without holding an evidentiary hearing. The juvenile court properly found that Mother did not make a prima facie showing that her changed circumstances, or that modification of the court's prior orders would promote K.C.'s best interests. (See *In re C.J.W.* (2007) 157 Cal.App.4th 1075, 1081 [summary denial of § 388 petition was proper where there was no showing of how the children's best interests would be served by depriving them of a permanent stable home in exchange for an uncertain future].)

## **DISPOSITION**

The order is affirmed.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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GROVER, J.

***In re K.C.; Santa Cruz County H.S.D. v. T.C.***  
**H042679**